

HOUSE BILL NO. 100

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Bill Status

H0100.....by BUSINESS
MANUFACTURED HOMES - RETAILERS/BROKERS - Amends, repeals and adds to
existing law relating to manufactured homes to revise purpose; to require
criminal history checks; to provide for reinstatement; to revise
definitions; to revise provisions applicable to administration; to revise
fees and fee requirements; to revise provisions relating to board
membership; to revise provisions applicable to disciplinary actions; to
revise violation provisions; to revise penalty provisions; and to set forth
additional requirements for retailers and resale brokers.

02/02 House intro - 1st rdg - to printing

02/05 Rpt prt - to Bus

02/16 Rpt out - rec d/p - to 2nd rdg

02/19 2nd rdg - to 3rd rdg

02/22 3rd rdg - PASSED - 43-26-1

AYES -- Anderson, Bell, Bilbao, Black, Block, Bock, Boe, Bolz,
Brackett, Bradford, Chadderdon, Chavez, Chew, Collins, Crane,
Edmunson, Hagedorn, Henbest, Henderson, Jaquet, Killen, King,
LeFavour, Mathews, Pasley-Stuart, Patrick, Pence, Ring, Ringo,
Roberts, Ruchti, Rusche, Sayler, Shepherd(2), Shirley, Shively,
Smith(30), Smith(24), Snodgrass, Stevenson, Trail, Wills, Wood(27)

NAYS -- Andrus, Barrett, Bayer, Clark, Durst, Eskridge, Hart,
Harwood, Kren, Labrador, Lake, Loertscher, Luker, Marriott,
McGeachin, Mortimer, Moyle, Nielsen, Nonini, Raybould, Schaefer,
Shepherd(8), Thayn, Vander Woude, Wood(35), Mr. Speaker

Absent and excused -- Bedke

Floor Sponsor - Snodgrass

Title apvd - to Senate

02/23 Senate intro - 1st rdg - to Com/HuRes

03/02 Rpt out - rec d/p - to 2nd rdg

03/05 2nd rdg - to 3rd rdg

03/08 3rd rdg - PASSED - 27-7-1

AYES -- Bair, Bastian, Bilyeu, Broadsword, Cameron, Coiner, Corder,
Darrington, Davis, Gannon, Goedde, Hammond, Heinrich, Jorgenson,

Kelly, Keough, Langhorst, Little, Lodge, Malepeai, McGee, McKenzie,
Schroeder, Siddoway, Stegner, Stennett, Werk
NAYS -- Burkett, Fulcher, Geddes, Hill, McKague, Pearce, Richardson
Absent and excused -- Andreason

Floor Sponsor - Broadsword

Title apvd - to House

03/09 To enrol
03/12 Rpt enrol - Sp signed
03/13 Pres signed
03/14 To Governor
03/20 Governor signed
Session Law Chapter 112
Effective: 07/01/07

Bill Text

]]]] LEGISLATURE OF THE STATE OF IDAHO]]]]
Fifty-ninth Legislature First Regular Session - 2007

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 100

BY BUSINESS COMMITTEE

1 AN ACT
2 RELATING TO MANUFACTURED HOMES; AMENDING SECTION 44-2101, IDAHO CODE, TO
3 REVISE DESCRIPTIVE LANGUAGE, TO REVISE THE PURPOSE, TO REQUIRE CRIMINAL
4 HISTORY CHECKS AND TO PROVIDE FOR REINSTATEMENT; REPEALING SECTION
5 44-2101A, IDAHO CODE, RELATING TO DEFINITIONS; AMENDING CHAPTER 21, TITLE
6 44, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 44-2101A, IDAHO CODE, TO
7 DEFINE TERMS; AMENDING SECTION 44-2102, IDAHO CODE, TO REVISE PROVISIONS
8 APPLICABLE TO ADMINISTRATION; AMENDING SECTION 44-2103, IDAHO CODE, TO
9 REVISE FEES AND FEE REQUIREMENTS; AMENDING SECTION 44-2104, IDAHO CODE, TO
10 REVISE DESCRIPTIVE LANGUAGE AND TO REVISE PROVISIONS RELATING TO BOARD
11 MEMBERSHIP; AMENDING SECTION 44-2105, IDAHO CODE, TO REVISE DESCRIPTIVE
12 LANGUAGE, TO REVISE PROVISIONS APPLICABLE TO DISCIPLINARY ACTIONS AND TO
13 MAKE A TECHNICAL CORRECTION; AMENDING SECTION 44-2106, IDAHO CODE, TO
14 REVISE VIOLATIONS PROVISIONS; AMENDING SECTION 44-2107, IDAHO CODE, TO
15 REVISE PENALTY PROVISIONS; AND AMENDING CHAPTER 21, TITLE 44, IDAHO CODE,
16 BY THE ADDITION OF A NEW SECTION 44-2108, IDAHO CODE, TO SET FORTH ADDI-
17 TIONAL REQUIREMENTS FOR RETAILERS AND RESALE BROKERS.

18 Be It Enacted by the Legislature of the State of Idaho:

19 SECTION 1. That Section 44-2101, Idaho Code, be, and the same is hereby
20 amended to read as follows:

44-2101. PURPOSE -- LICENSE REQUIRED -- **REINSTATEMENT.** (1) The legislature finds that the regulation and control of those persons engaged in the business of manufacturing, selling, installing or servicing of manufactured **and mobile** homes is necessary to protect the health and safety of the citizens of Idaho. To that end, it shall be unlawful for any person to engage in business as a manufacturer, ~~of manufactured homes, a manufactured home dealer, manufactured home~~ **retailer, resale broker,** installer, ~~manufactured home~~ service company, ~~or a manufactured home~~ salesman **or responsible managing employee** without being duly licensed as provided in this chapter.

(2) On and after July 1, 2007, all applicants for retailer or resale broker original licensure will be required to submit to a fingerprint-based criminal history check of the Idaho central criminal database and the federal bureau of investigation criminal history database. Each applicant for original licensure must submit a full set of the applicant's fingerprints and any relevant fees directly to the Idaho state police and the federal bureau of investigation identification division for this purpose.

(3) If the licensee fails to submit a completed application for renewal or to pay the renewal fee on or before the expiration date, the administrator may accept a later application for reinstatement subject to such conditions as the board may require by rule including, but not limited to, the assessment of a late fee; provided that between the license expiration date and the date of reinstatement of the license, the rights of the licensee under such license shall be expired, and during such period of expiration it shall be unlawful

2

for such licensee to do or attempt to offer to do any of the acts of the kind and nature described in the definitions in section 44-2101A, Idaho Code, in consideration of compensation of any kind or expectation thereof. An expired license that is not reinstated within six (6) months of the expiration date shall be automatically terminated by the administrator and may not be reinstated.

SECTION 2. That Section 44-2101A, Idaho Code, be, and the same is hereby repealed.

SECTION 3. That Chapter 21, Title 44, Idaho Code, be, and the same is hereby amended by the addition thereto of a **NEW SECTION**, to be known and designated as Section 44-2101A, Idaho Code, and to read as follows:

44-2101A. DEFINITIONS. As used in this chapter:

(1) "Administrator" means the administrator of the division of building safety of the state of Idaho.

(2) "Board" means the manufactured housing board established in section 44-2104, Idaho Code.

(3) "Engaged in the business" means the individual or entity buys, sells, brokers, trades, or offers for resale a manufactured or mobile home.

(4) "Installer" means a person who owns a business that installs or services a manufactured home or mobile home at the site where it is to be used for occupancy.

(5) "Manufactured home" or "manufactured house" means a structure as defined in section 39-4105, Idaho Code.

24 (6) "Manufacturer" means any person engaged in the business of manufac-
 25 turing manufactured homes that are offered for sale, lease or exchange in the
 26 state of Idaho.

27 (7) "Mobile home" means a structure as defined in section 39-4105, Idaho
 28 Code.

29 (8) "Person" means a natural person, corporation, partnership, trust,
 30 society, club, association or other organization.

31 (9) "Place of business" refers to any physical location at which the
 32 business is lawfully conducted.

33 (10) "Resale broker" means any person engaged in the business of selling
 34 broker-owned, used, third-party owned, or other resale of manufactured or
 35 mobile homes.

36 (11) "Responsible managing employee" or "RME" means the person designated
 37 by the retailer or resale broker to supervise other employees, either person-
 38 ally or through others.

39 (12) "Retailer" means any person engaged in the business of selling or
 40 exchanging new, used, resale or brokered manufactured or mobile homes.

41 (13) "Salesman" means any person employed by a retailer or resale broker
 42 for a salary, commission or compensation of any kind to sell, list, purchase
 43 or exchange or to negotiate for the sale, listing, purchase or exchange of
 44 new, used, brokered or third-party owned units, except as otherwise provided
 45 in this chapter.

46 (14) "Service company" means any person other than an installer who pro-
 47 vides service, repair or tear down of manufactured or mobile homes.

48 SECTION 4. That Section 44-2102, Idaho Code, be, and the same is hereby
 49 amended to read as follows:

50 44-2102. ADMINISTRATION -- POWERS AND DUTIES. The administrator is

3

1 charged with the administration of the provisions of this chapter and shall:

2 (1) In accordance with the provisions of chapter 52, title 67, Idaho
 3 Code, promulgate, adopt, amend, and repeal rules for the establishment of a
 4 mandatory statewide manufactured home "setup" code. The administrator shall
 5 also define and prohibit any practice which is found to be deceptive.

6 (2) Prescribe the form and content of a new manufactured home buyer's
 7 information and disclosure form. Unless otherwise provided by the administra-
 8 tor, the form shall be presented by *manufactured home dealers* **the retailer** to
 9 each purchaser of a new manufactured home, and shall be executed by the *dealer*
 10 **retailer** and purchaser at the time the initial purchase order is signed for
 11 the sale of a new manufactured home.

12 (3) (a) A used unit which has been determined to be or declared by the
 13 owner to be real property under the provisions of section 63-304, Idaho
 14 Code, may be offered for sale, listed, bought for resale, negotiated for,
 15 either directly or indirectly, by a licensed real estate broker or a real
 16 estate salesman representing a licensed **real estate** broker, but not a *man-*
 17 *ufactured—home dealer* **retailer, resale broker** or *manufactured home* sales-
 18 man.

19 (b) A used unit which has been determined to be and is carried on the tax
 20 rolls as personal property may be offered for sale, listed, bought for

resale, negotiated for, either directly or indirectly, by a licensed real estate broker or a real estate salesman, pursuant to chapter 20, title 54, Idaho Code, or by a licensed ~~manufactured home dealer~~ **retailer, resale broker** or ~~manufactured home salesman~~, but with respect to a licensed ~~manufactured home dealer~~ **retailer, resale broker** or salesman only to the extent such sale does not involve the purchase or sale of an interest in real estate.

(c) A licensed real estate broker or real estate salesman representing a licensed **real estate** broker pursuant to chapter 20, title 54, Idaho Code, may participate in new manufactured home sales that include real estate if the real estate broker or salesman has a valid, written agreement with a licensed ~~manufactured home dealer~~ **retailer** to represent the interests of the ~~manufactured home dealer~~ **retailer** in this type of transaction.

(4) Promulgate rules establishing a program for the timely resolution of disputes between manufacturers, retailers, **resale brokers** and installers of manufactured homes. The rules shall be consistent with the United States department of housing and urban development's procedural and enforcement authority in 42 U.S.C. 5422(c)(12), and shall include identifying the respective responsibilities of manufacturers, retailers, **resale brokers** and installers; providing for the issuance of appropriate orders for the correction or repair of defects in manufactured homes that are reported during the one (1) year period following the date of installation; and may include an appropriate schedule of fees.

SECTION 5. That Section 44-2103, Idaho Code, be, and the same is hereby amended to read as follows:

44-2103. FEES -- DEPOSIT OF FEES. (1) Fees for licensing of ~~dealers~~ **retailers, resale brokers**, installers, manufacturers, salesmen, ~~responsible managing employees~~ **RMEs** and service companies shall not exceed:

- (a) ~~Manufactured home dealer's~~ **Retailer or resale broker** license \$500.00
- (b) Manufacturer's license \$500.00
- (c) ~~Manufactured home s~~Service company/ **or** installer's license .. \$300.00
- (d) ~~Manufactured home salesman's~~ **Salesman** license \$ 50.00

4

- (e) ~~Responsible managing employees'~~ **RME** license \$ 50.00

(2) All license fees collected by the division of building safety under the provisions of this chapter shall be paid into the manufactured housing account, which is hereby created in the dedicated fund. The expenses incurred in administering and enforcing the provisions of this chapter shall be paid from the account.

(3) The following performance bonding requirements shall be met before the issuance of these licenses:

- (a) Manufacturer \$20,000 bond
- (b) ~~Manufactured home dealer~~ **Retailer** \$240,000 bond
- (c) **Resale broker** **\$30,000 bond**
- (d) ~~Manufactured home s~~Service company/ **or** installer \$ 5,000 bond

(4) The administrator is authorized to provide by rule, in accordance with the provisions of section 44-2102, Idaho Code, for the acceptance of a

money deposit of cash or securities in lieu of a bond in satisfaction of the bonding requirements of this section.

(5) Fees and bond requirements of this section shall be the exclusive fee and bond requirements for dealers retailers, resale brokers, installers, manufacturers, salesmen and service companies governed by the provisions of this chapter, and shall supersede any program of any political subdivision of the state which sets fee or bond requirements for the same services.

(6) A retailer or resale broker must obtain a separate service company or installer license, pay the license fee set forth in subsection (1)(c) of this section and meet the bonding requirements of subsection (3)(d) of this section in order to provide the services covered by a service company or installer license.

SECTION 6. That Section 44-2104, Idaho Code, be, and the same is hereby amended to read as follows:

44-2104. MANUFACTURED ~~HOME ADVISORY~~ HOUSING BOARD. (1) A manufactured ~~home advisory~~ housing board is established in the division of building safety to advise the administrator in the administration and enforcement of the provisions of this chapter. The board shall consist of five (5) members, appointed by the governor, four (4) of whom shall be ~~from~~ licensed ~~manufactured home dealers~~ retailers and one (1) of whom shall be a consumer who lives in a manufactured home. ~~The board members shall serve the following terms commencing January 1, 1989: two (2) members shall be appointed for a term of one (1) year, two (2) members shall be appointed for a term of two (2) years, and one (1) member shall be appointed for a term of three (3) years. The consumer member shall be a member appointed to a term beginning on January 1, 1996, or as soon thereafter as there is a vacancy on the board. Thereafter board members shall be appointed for a term of three (3) years.~~ Not more than three (3) members shall at any time belong to the same political party. Whenever a vacancy occurs, the governor shall appoint a qualified person to fill the vacancy for the unexpired portion of the term. The members of the board shall be compensated as provided in section 59-509(n), Idaho Code, for each day spent in attendance at meetings of the board. A majority of members shall constitute a quorum, and a quorum at any meeting called by the administrator shall have full and complete power to act upon and resolve in the name of the board any matter, thing or question referred to it by the administrator, or which by reason of any provision of this chapter, it has the power to determine.

(2) The board shall, on the first day of each January or as soon thereafter as practicable, elect a chairman, vice chairman and secretary from among

its members, and these officers shall hold office until their successors are elected. As soon as the board has elected its officers, the secretary shall certify the results of the election to the administrator. The chairman shall preside at all meetings of the board and the secretary shall make a record of the proceedings which shall be preserved in the offices of the division of building safety. If the chairman is absent from any meeting of the board, his duties shall be discharged by the vice chairman. All members of the board present at a meeting shall be entitled to vote on any question, matter, or

9 thing which properly comes before it.

10 (3) The board shall have the authority to promulgate rules in accordance
11 with chapter 52, title 67, Idaho Code, to implement the provisions of this
12 chapter.

13 SECTION 7. That Section 44-2105, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 44-2105. *SUSPENSION OR REVOCATION OF LICENSES* **DISCIPLINE** -- HEARING --
16 JUDICIAL REVIEW -- REAPPLICATION. (1) The administrator may **refuse to issue,**
17 **renew, or reinstate or may** suspend, ~~or~~ revoke **or take other disciplinary**
18 **action against** any license, if the license was obtained through error or
19 fraud, or if the holder thereof is shown to be grossly incompetent, or has
20 ~~wilfully~~ **willfully** violated any provision of this chapter or the rules adopted
21 thereunder, **or has been convicted of conduct constituting a felony or any**
22 **theft or fraud offense, or has ever had a business license revoked in this or**
23 **any other state or territory of the United States.**

24 (2) The administrator shall have the power to appoint, by an order in
25 writing, any competent person to take testimony at a **any disciplinary hearing.**
26 ~~conducted for the purposes of determining whether a license should be sus-~~
27 ~~pended or revoked.~~ The administrator, and any hearing officer appointed by the
28 administrator, shall have the power to administer oaths, issue subpoenas and
29 compel the attendance of witnesses and the production of documents and
30 records.

31 (3) Before any license shall be suspended, ~~or~~ revoked **or otherwise**
32 **disciplined,** the holder thereof shall be served with written notice enumerat-
33 ing the charges against him, and shall be afforded an opportunity for an
34 appropriate contested case in accordance with the provisions of chapter 52,
35 title 67, Idaho Code. The notice shall specify the time and place for hearing,
36 which time shall not be less than five (5) days after the service thereof.

37 (4) Any party aggrieved by an order of the administrator ~~suspending or~~
38 ~~revoking~~ **disciplining** a license shall be entitled to judicial review thereof
39 in accordance with the provisions of chapter 52, title 67, Idaho Code.

40 (5) Any person whose license has been revoked may not apply for a new
41 license until the expiration of one (1) year from the date of such revocation.

42 SECTION 8. That Section 44-2106, Idaho Code, be, and the same is hereby
43 amended to read as follows:

44 44-2106. VIOLATIONS. (1) It shall be unlawful to engage in business as a
45 manufacturer, ~~manufactured home dealer, manufactured home~~ **retailer, resale**
46 **broker,** installer, ~~manufactured home~~ salesman, ~~or manufactured home~~ service
47 company **or RME** without being duly licensed by the division of building safety
48 pursuant to this chapter, **except that an individual may buy, sell, broker,**
49 **trade or offer for resale up to two (2) manufactured or mobile homes, or a**
50 **combination thereof, in any one (1) calendar year without being licensed under**
51 **this chapter if all of the units have been properly titled in the name of that**

1 **individual.**

2 (2) It shall be unlawful for a manufacturer, ~~manufactured home dealer,~~

3 ~~manufactured home~~ **retailer, resale broker,** installer, ~~manufactured home~~
 4 ~~salesman, or manufactured home~~ service company **or RME** to:

5 (a) Intentionally publish or circulate any advertising which is mislead-
 6 ing or inaccurate in any material particular or which misrepresents any of
 7 the products or services sold or provided by a manufacturer, ~~manufactured~~
 8 ~~home dealer, manufactured home~~ **retailer, resale broker,** installer, sales-
 9 man, ~~or~~ service company **or RME**;

10 (b) Violate any of the provisions of this chapter or any rule adopted by
 11 the division of building safety pursuant to this chapter;

12 (c) Knowingly purchase, sell or otherwise acquire or dispose of a stolen
 13 manufactured or mobile home;

14 (d) With respect only to a ~~manufactured home dealer~~ **retailer or resale**
 15 **broker**, to engage in the business for which such ~~dealer~~ **retailer or resale**
 16 **broker** is licensed without at all times maintaining a principal place of
 17 business located within the state.

18 SECTION 9. That Section 44-2107, Idaho Code, be, and the same is hereby
 19 amended to read as follows:

20 44-2107. PENALTY PROVISIONS. (1) Whoever shall violate any of the provi-
 21 sions of this chapter, or any laws or rules adopted pursuant to this chapter,
 22 or who shall refuse to perform any duty lawfully enjoined upon him by the
 23 administrator within the prescribed time, or who shall fail, neglect, or
 24 refuse to obey any lawful order given or made by the administrator, shall be
 25 guilty of a misdemeanor and shall be subject to the civil penalties estab-
 26 lished by administrative rule but not to exceed one thousand dollars (\$1,000)
 27 in accordance with the following:

28 (a) Each day of such violation shall constitute a separate offense. A
 29 violation will be considered a second or additional offense only if it
 30 occurs within one (1) year from the first violation.

31 (b) The same penalties shall apply, upon conviction, to any member of a
 32 copartnership, or to any construction, managing or directing officer of
 33 any corporation, limited liability company or limited liability partner-
 34 ship or other such organization consenting to, participating in, or aiding
 35 or abetting any such violation of this chapter.

36 (2) In addition to any other penalties specified in this section, when-
 37 ever any person violates the provisions of this chapter by acting as a
 38 retailer, resale broker, installer, service company or RME, without a license,
 39 the administrator may maintain an action in the name of the state of Idaho to
 40 enjoin the person from any further violations in accordance with the follow-
 41 ing:

42 (a) Such action may be brought either in the county in which the acts are
 43 claimed to have been or are being committed, in the county where the
 44 defendant resides, or in Ada county.

45 (b) Upon the filing of a verified complaint in the district court, the
 46 court, if satisfied that the acts complained of have been or probably are
 47 being or may be committed, may issue a temporary restraining order and/or
 48 preliminary injunction, without bond, enjoining the defendant from the
 49 commission of any such act or acts constituting the violation.

50 (c) A copy of the complaint shall be served upon the defendant and the
 51 proceedings shall thereafter be conducted as in other similar civil
 52 actions. If the commission of the act or acts is established, the court

53 shall enter a decree permanently enjoining the defendant from committing

7

1 such act or acts. If an injunction issued under this section is violated,
 2 the court, or the judge thereof at chambers, may summarily try and punish
 3 the offender for contempt of court.

4 SECTION 10. That Chapter 21, Title 44, Idaho Code, be, and the same is
 5 hereby amended by the addition thereto of a **NEW SECTION**, to be known and des-
 6 ignated as Section 44-2108, Idaho Code, and to read as follows:

7 44-2108. RETAILER AND RESALE BROKER -- ADDITIONAL LICENSURE REQUIREMENTS.

8 (1) Each business office or retail sales location shall be owned or leased by
 9 the retailer or resale broker and shall comply with all local building codes,
 10 zoning, and other applicable land use regulatory ordinances, and:

11 (a) If the location is on leased property, the retailer or resale broker
 12 must provide written confirmation of the term and existence of the lease,
 13 signed by the lessor; and

14 (b) An exterior sign that identifies the retailer or resale broker by the
 15 name shown on the license must be prominently affixed to the location or
 16 the office building and be clearly visible and easily readable from the
 17 nearest major avenue of traffic; and

18 (c) The retailer or resale broker must prominently display his license,
 19 or a true and correct copy of that license, in each location; and

20 (d) The licensee must post, in a clearly visible and readily accessible
 21 location, written information concerning regular hours of business and
 22 emergency contact information.

23 (2) Regardless of the number of locations at which a retailer or resale
 24 broker engages in business, he must maintain a principal place of business
 25 that complies with the requirements set forth in subsection (1)(a) of this
 26 section, and at which the records of the business are maintained on a perma-
 27 nent basis.

28 (3) The retailer or resale broker must promptly notify the division of
 29 building safety, in writing, of any change in ownership, business name, loca-
 30 tion of business, mailing address or telephone numbers.

31 (4) For each new product sold, the retailer must provide proof, satisfac-
 32 tory to the board, of the retailer's current authority to sell that
 33 manufacturer's products.

34 (5) Failure to adhere to the requirements of this section, or any other
 35 requirement pertaining to licensure as set forth in law or rule, shall consti-
 36 tute grounds for the imposition of discipline up to and including revocation
 37 of licensure.

Statement of Purpose / Fiscal Impact

STATEMENT OF PURPOSE

RS 16690

This bill updates the licensing requirements for manufactured housing manufacturers, retailers, installers, service companies and salespeople. It adds a requirement for background checks for new licensees, increases bonding requirements and adds enforcement provisions for violation of the licensing requirements.

FISCAL NOTE

The licensing program is self-funded through license fees. No impact on the general fund.

Contact

Name: Jack Lyman, Idaho manufactured Housing Association

Phone: 342.0031

STATEMENT OF PURPOSE/FISCAL NOTE

H 100